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Attorney for Plaintiff

HUNTER KERHART

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

HUNTER KERHART,

Plaintiff,

v.

GLASSFAB TEMPERING SERVICES  
INC.,

Defendant.

Civil Action No. 2:24-at-261

**COMPLAINT**

Plaintiff Hunter Kerhart (“Plaintiff”) sues defendant GlassFab Tempering Services Inc. (“Defendant”), and alleges as follows:

**THE PARTIES**

1. Plaintiff is an individual who is a citizen of the State of California.

2. Defendant is a corporation organized and existing under the laws of the State of California with its principal place of business located at 1448 Mariana Court, Tracy, CA 95376. Defendant's agent for service of process is Surinderpal Singh Bains, 1448 Mariana Court, Tracy, CA 95376.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Defendant because it has maintained sufficient minimum contacts with California such that the exercise of personal jurisdiction over it would not offend traditional notions of fair play and substantial justice.

5. Venue properly lies in this district pursuant to 28 U.S.C. § 1400(a) because Defendant or its agents reside or may be found in this district. "The Ninth Circuit has interpreted Section 1400(a) to mean that venue is proper in any judicial district in which the defendant would be amenable to personal jurisdiction." Righthaven LLC v. Inform Techs., Inc., No. 2:11-CV-00053-KJD-LRL, 2011 U.S. Dist. LEXIS 119379, at \*8 (D. Nev. Oct. 14, 2011) (citing Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1128 (9th Cir. 2010)).

## **FACTS**

### **I. Plaintiff's Business**

6. Plaintiff is an architectural photographer specializing in high-end imagery of high-rises, interiors, and landscape architecture (see <https://hunterkerhart.com/>).

7. Plaintiff's career began in the film industry when he stumbled upon an archive of historic Los Angeles images and become obsessed with rediscovering – then later recreating – these iconic shots.

8. Plaintiff is certified by the Association of Independent Architectural Photographers (AIAP) and the Professional Aerial Photographers Association (PAPA).

### **II. The Work at Issue in this Lawsuit**

9. In 2020, Plaintiff took a professional photograph of the Kaiser Permanente Bernard J. Tyson School of Medicine building titled “20200426\_HK37097” (the “Work”). A copy of the Work is displayed below:



10. The Work was registered by Plaintiff with the Register of Copyrights on April 18, 2022 and was assigned Registration No. VA 2-300-234. A true and correct copy of the Certificate of Registration pertaining to the Work is attached hereto as **Exhibit “A.”**

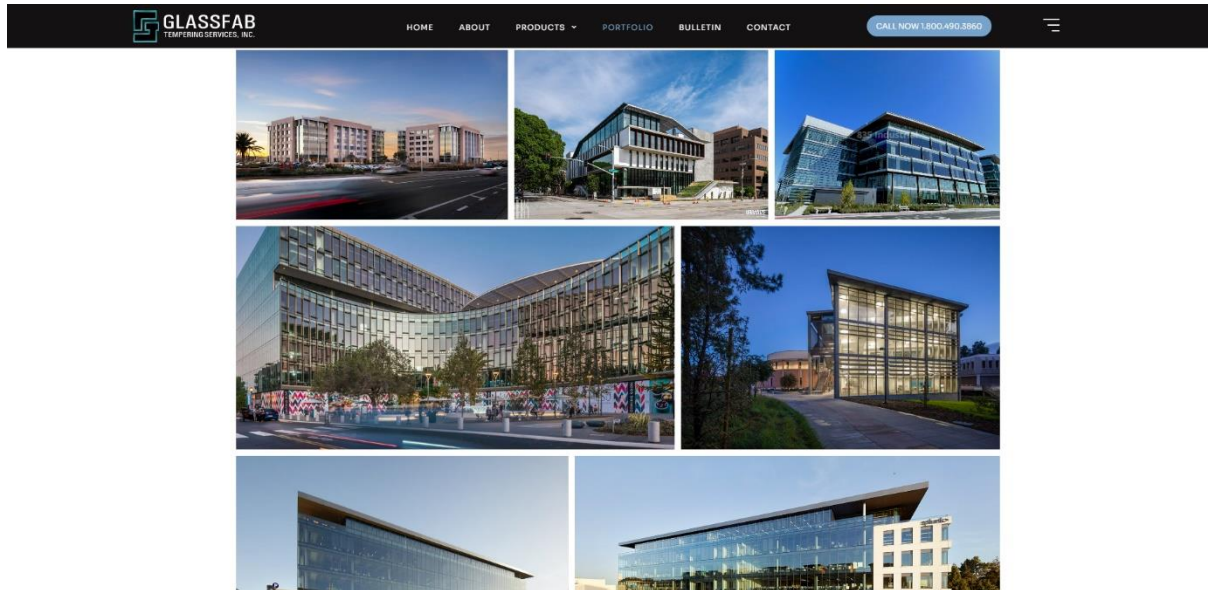
11. Plaintiff is the owner of the Work and has remained the owner at all times material hereto.

## **II. Defendant’s Unlawful Activities**

12. Defendant is a glass fabrication and glass tempering service company.

13. Defendant advertises/markets its business through its website (<https://www.glassfabusa.com>) and other forms of advertising.

14. In January 2023 (after Plaintiff's above-referenced copyright registration of the Work), Defendant displayed and/or published the Work on its website, webpage, and/or social media (at <https://glassfabusa.com/portfolio/>):



15. A true and correct copy of screenshots of Defendant's website, webpage, and/or social media, displaying the copyrighted Work, is attached hereto as **Exhibit "B."**

16. Defendant is not and has never been licensed to use or display the Work. Defendant never contacted Plaintiff to seek permission to use the Work in connection with Defendant's website, webpage, social media, or for any other purpose.

17. Defendant utilized the Work for commercial use.

18. Upon information and belief, Defendant located a copy of the Work

1 on the internet and, rather than contact Plaintiff to secure a license, simply copied  
2 the Work for its own commercial use.

3 19. Through his ongoing diligent efforts to identify unauthorized use of  
4 its photographs, Plaintiff first discovered Defendant's unauthorized use/display  
5 of the Work in April 2023. Following Plaintiff's discovery, Plaintiff notified  
6 Defendant in writing of such unauthorized use. To date, Plaintiff has been unable  
7 to negotiate a reasonable license for the past infringement of the Work.  
8

9 20. All conditions precedent to this action have been performed or have  
10 been waived.  
11

12 **COUNT I – COPYRIGHT INFRINGEMENT**

13 21. Plaintiff re-alleges and incorporates paragraphs 1 through 20 as set  
14 forth above.

15 22. Each photograph comprising the Work is an original work of  
16 authorship, embodying copyrightable subject matter, that is subject to the full  
17 protection of the United States copyright laws (17 U.S.C. § 101 *et seq.*).  
18

19 23. Plaintiff owns a valid copyright in each photograph comprising the  
20 Work, having registered the Work with the Register of Copyrights.

21 24. As a result of Plaintiff's reproduction, distribution, and public display  
22 of the Work, Defendant had access to the Work prior to its own reproduction,  
23 distribution, and public display of the Work on its website, webpage, and/or social  
24

media.

25. Defendant reproduced, distributed, and publicly displayed the Work without authorization from Plaintiff.

26. By its actions, Defendant infringed and violated Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 501, by reproducing, distributing, and publicly displaying the Work for its own commercial purposes.

27. Defendant's infringement was willful as it acted with actual knowledge or reckless disregard for whether its conduct infringed upon Plaintiff's copyright. Notably, Defendant itself utilizes a copyright disclaimer on its website ("Copyright © 2023 GlassFab"), indicating that Defendant understands the importance of copyright protection and intellectual property rights and is actually representing that it owns each of the photographs published on its website. See, e.g., Bell v. ROI Prop. Grp. Mgmt., LLC, No. 1:18-cv-00043-TWP-DLP, 2018 U.S. Dist. LEXIS 127717, at \*3 (S.D. Ind. July 31, 2018) ("[T]he willfulness of ROI's infringement is evidenced by the fact that at the bottom of the webpage on which the Indianapolis photograph was unlawfully published appeared the following: 'Copyright © 2017.' By placing a copyright mark at the bottom of its webpage that contained Mr. Bell's copyrighted Indianapolis Photograph, Mr. Bell



1 asserts ROI willfully infringed his copyright by claiming that it owned the  
2 copyright to everything on the webpage.”); John Perez Graphics & Design, LLC  
3 v. Green Tree Inv. Grp., Inc., Civil Action No. 3:12-cv-4194-M, 2013 U.S. Dist.  
4 LEXIS 61928, at \*12-13 (N.D. Tex. May 1, 2013) (“Once on Defendant’s  
5 website, Defendant asserted ownership of Plaintiff’s Registered Work by  
6 including a copyright notice at the bottom of the page. Based on these allegations,  
7 the Court finds Plaintiff has sufficiently pled a willful violation....”). Defendant  
8 clearly understands that professional photography such as the Work is generally  
9 paid for and cannot simply be copied from the internet.

13 28. Plaintiff has been damaged as a direct and proximate result of  
14 Defendant’s infringement.

15 29. Plaintiff is entitled to recover his actual damages resulting from  
16 Defendant’s unauthorized use of the Work and, at Plaintiff’s election (pursuant to  
17 17 U.S.C. § 504(b)), Plaintiff is entitled to recover damages based on a  
18 disgorgement of Defendant’s profits from infringement of the Work, which  
19 amounts shall be proven at trial.

21 30. Alternatively, and at Plaintiff’s election, Plaintiff is entitled to  
22 statutory damages pursuant to 17 U.S.C. § 504(c), in such amount as deemed  
23 proper by the Court.  
24



1           31. Pursuant to 17 U.S.C. § 505, Plaintiff is further entitled to recover his  
2 costs and attorneys' fees as a result of Defendant's conduct.

3           32. Defendant's conduct has caused, and any continued infringing  
4 conduct will continue to cause, irreparable injury to Plaintiff unless enjoined by  
5 the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502,  
6 Plaintiff is entitled to a permanent injunction prohibiting infringement of  
7 Plaintiff's exclusive rights under copyright law.  
8

9           **WHEREFORE**, Plaintiff demands judgment against Defendant as follows:

- 10           a. A declaration that Defendant has infringed Plaintiff's copyrights in the  
11           Work;  
12           b. A declaration that such infringement is willful;  
13           c. An award of actual damages and disgorgement of profits as the Court deems  
14           proper or, at Plaintiff's election, an award of statutory damages for willful  
15           infringement up to \$150,000.00 for each photograph comprising the Work;  
16           d. Awarding Plaintiff his costs and reasonable attorneys' fees pursuant to 17  
17           U.S.C. § 505;  
18           e. Awarding Plaintiff interest, including prejudgment interest, on the foregoing  
19           amounts;  
20           f. Permanently enjoining Defendant, its employees, agents, officers, directors,  
21           attorneys, successors, affiliates, subsidiaries and assigns, and all those in  
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1 active concert and participation with Defendant, from directly or indirectly  
2 infringing Plaintiff's copyrights or continuing to display, transfer, advertise,  
3 reproduce, or otherwise market any works derived or copied from the Work  
4 or to participate or assist in any such activity; and

5  
6 g. For such other relief as the Court deems just and proper.

7 **Demand For Jury Trial**

8 Plaintiff demands a trial by jury on all issues so triable.

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11  
12 DATED: March 4, 2024.

**COPYCAT LEGAL PLLC**

13 By: /s/ Lauren M. Hausman  
14 Lauren M. Hausman, Esq.  
15 Attorney for Plaintiff  
16 Hunter Kerhart  
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